

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 229X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN ELLIS  
COUNTY, TX

Decided: July 28, 2006

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.57-mile line of railroad known as the Waxahachie Industrial Lead extending from milepost 798.03, near Waxahachie, to milepost 802.60, near Nena, in Ellis County, TX. Notice of the exemption was served and published in the Federal Register on December 7, 2005 (70 FR 72876). The exemption became effective on January 6, 2006.<sup>1</sup>

By decision and notice of interim trail use or abandonment (NITU) served on February 1, 2006, the proceeding was reopened and a 180-day period was authorized for the City of Waxahachie, TX (the City) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way in this proceeding. The negotiating period under the NITU is scheduled to expire on July 31, 2006.

On March 17, 2006, the Texas Department of Transportation (TXDOT) late-filed a request for authorization to replace the City in negotiating an agreement with UP for the subject rail line, for the remaining time left within the 180-day period and for the issuance of a public use condition.

By decision served on April 13, 2006, TXDOT was not granted authorization to replace the City with respect to trail use negotiations because the City had been granted only a right to negotiate with UP for interim trail use, and TXDOT had not filed a NITU request. However, the decision did reopen the proceeding and a public use condition was imposed for the remainder of the 180-day period from January 6, 2006 (the effective date of the exemption), until July 5, 2006. The public use condition expired on July 5, 2006, and cannot be extended.<sup>2</sup>

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<sup>1</sup> By decision served on January 5, 2006, the proceeding was reopened and the exemption was made subject to three environmental conditions, which remain in effect.

<sup>2</sup> Under 49 U.S.C. 10905 and 49 CFR 1152.28(b), the Board cannot impose a public use condition beyond the 180-day period after the effective date of the decision approving or exempting the abandonment.

On July 21, 2006, the City filed a request for an additional 90-day extension of the trail use negotiating period, until October 29, 2006. The City states that it desires to continue negotiations with UP, but additional time is needed beyond the July 31, 2006 deadline to reach an agreement. In a response received on July 27, 2006, UP advised the Board that it is willing to continue negotiating with the City for interim trail use.

Where, as here, the carrier is willing to continue trail use negotiations, the NITU negotiating period may be extended.<sup>3</sup> An extension of the negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended for an additional 90 days from July 31, 2006, until October 29, 2006.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to October 29, 2006.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>3</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).